IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 72 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VINODKUMAR FATEHCHAND PUDNIYA & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR KJ SHETHNA for Appellant(s) : 1 - 3.
MR PD BHATE APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/11/2007

ORAL JUDGMENT

1. This appeal has been filed by the original accused challenging

the judgment and order dated 30.12.1995 rendered by the learned Sessions Judge, Bharuch in Sessions Case No.84 of 1995. Appellant No.2, original accused No.2 died during the pendency of the appeal and the appeal qua this appellant therefore, abated.

2. On 27.12.1995, in the late evening hours, one Veenaben wife of Vinodkumar Fatehchand received serious burn injuries. She was initially taken to a local hospital at Ankleshwar. Upon doctor's advise thereafter, she was shifted to Dr. Khan's burns hospital and later on, she was admitted in the Government Hospital at Bharuch. After short treatment, the lady succumbed to her injuries. She expired at about 5:30 in the evening on 28.2.1995.

2.1. A complaint came to be lodged by one Jayeshbhai Kesrimal, brother of the deceased Veenaben before the Ankleswhar Police Station, on 28.2.1995 at about 12:05 p.m. In the complaint, the complainant stated inter alia that his sister Veenaben had got married to accused No.1 about five years back. The husband of Veenaben as well her father-in-law and mother-in-law were making persistent demand of money. It was being told that her father has not given any dowry and that she should get some money. She was being beaten up and also verbally abused. In the complaint, it is stated inter alia that Veenaben was married to

accused No.1 about five years back. Whenever she used to visit her parents' place, she used to complain that her mother-in-law, father-in-law and her husband are making demand of money saying that her father has not given any dowry. They used to physical beat her and also used to verbally abuse her. The complainant and his mother had visited Ankleshwar personally and tried to persuade the husband and in-laws of Veenaben not to harass her. About one and half month before the incident, Veenaben had come to the house of the complainant and stated that the dowry demand has not stopped from her husband and his parents and that she is being beaten up frequently. She stated that she does not wish to go back. The complainant however, personally went to leave her at Ankleshwar and persuaded her relatives. However, the quarrels continued. On 28.2.1995 at about 1:30 at night, Vinodbhai (husband of deceased Veenaben) visited the complainant and told him that Veenaben has received burn injuries and she is admitted in the hospital at Bharuch. The complainant and his mother Vimlaben therefore, rushed to Bharuch Civil Hospital and saw that Veenaben had received burn injuries on the whole body. They tried to speak her, but she could not talk. Upon being asked, his brother-in-law told him that Veenaben herself set her on fire.

2.2. Pursuant to the said complaint, investigation was carried

out by the police. Upon completion of the investigation, chargesheet was filed. The case was committed for trial before the learned Sessions Judge, Bharuch, who conducted the trial. During the trial, the prosecution examined several witnesses including the complainant, the parents of the deceased Veenaben and Executive Magistrate, who had recorded dying declaration of the deceased.

2.3. The defence in addition to denying the allegations levelled, examined the brother of the husband of Veenaben as defence witness No.1.

2.4. Upon conclusion of the trial, the learned Sessions Judge found that against accused No.1 i.e. husband of deceased Veenaben charge under Sections 498-A as well as under Section 306 of Indian Penal Code is proved. He however, was pleased to find insufficient evidence against accused No.2 and 3 i.e. father and mother of the husband of Veenaben in so far as the offence punishable under Section 306 of Indian Penal Code is concerned. He however, convicted accused Nos. 2 and 3 for the offence punishable under Section 498-A of Indian Penal Code.

2.5. To accused No.1, the learned Sessions Judge awarded

sentence of rigorous imprisonment for three years and fine of Rs.3000/- under Section 498-A of Indian Penal Code. Under section 306 of Indian Penal Code, he was sentenced to undergo rigorous imprisonment for a period of five years and pay fine of Rs.5000/-.

2.6. Accused Nos. 2 and 3 were sentenced to undergo rigorous imprisonment for a period of two years and pay fine of Rs.2000/- for the offence punishable under Section 498-A of Indian Penal Code.

3. Learned Judge framed charge at Exhibit 9 against the accused alleging that on account of persistent dowry demand by the accused, the deceased Veenaben on 27.2.1995 at 21:30 hours poured kerosene on herself and set herself ablaze and thereby committed suicide. They were, therefore, charged with the offences punishable under Sections 498-A, 306 read with Section 114 of Indian Penal Code.

4. As noted earlier, the prosecution examined the complainant (P.W.-3) at Exhibit 30. Mother of the deceased Veenaben namely Vimlaben (P.W.-4) was examined at Exhibit 31. Father of the deceased Kesrimal Pokhraj (P.W.-5) was examined at Exhibit 54.

4.1. The Executive Magistrate - Ahmad Yusuf Saji (P.W.-2) was

examined at Exhibit 25. He had recorded dying declaration of the deceased.

4.2. In addition thereto the prosecution had also examined the concerned Doctor, who had given treatment to the deceased as well as who had carried out her postmortem. The P.S.O., In-charge of the Police Station, where the complaint was filed as well as Investigating Officer, who had carried out investigation were also examined.

4.3. On behalf of the defence, brother of accused No.1, Subhashchandra Fatehchand (D.W.-1) was examined at Exhibit-94.

5. Jayeshbhai Kesrimal (P.W.-3) stated inter alia that his sister got married to accused No.1 about five years before the date of incident. Veenaben and her husband were residing with parents of the husband. He stated that his brother-in-law used to torture Veenaben. Every couple of month, when she used to come to his house, she used to say that her parents-in-law and her husband were making dowry demand and that she was being beaten up. Such complaints were made about 10 to 12 times. Every time, he would persuade Veenaben and take her back to her husband's house and would also try to persuade her husband and his parents. About one and half month before her death, Veenaben had

come to the house of the complainant. She had gone there, since she was being beaten and tortured. The complainant once again persuaded Veenaben to return to her in-laws' house. At that time, he explained to her in-laws that as per the community customs and as per his capacity, the dowry had been given at the time of marriage. His parents were unable to pay any more amount. On 27.2.1995, late at night at about 1:30, accused No.1 came to their house in jeep and told them that Veenaben had got burnt and she was admitted in the hospital. The complainant and his mother therefore, sat in the same jeep and reached Bharuch Civil Hospital in about one hour. His sister was kept in a room in the hospital. He could not bear the sight and therefore, immediately came out. He found that his sister was completely burnt. His mother stayed with Veenaben for ten to fifteen minutes. Upon being asked, his brother-in-law told him that Veenaben set herself ablaze.

5.1. In his cross-examination, the witness pleaded ignorance about whether before being brought to the hospital at Bharch, his sister was admitted in Dr. Khan's hospital or at Patel Surgical Home at Ankleshwar. He denied that in the hospital at Bharuch, his mother inquired about the ornaments, which Veenaben used to wear to accused No.1. He denied that he had quarreled with accused No.1 for returning of ornaments. He remained in the hospital for about 15 minutes. He

came to Kosamba at about 3 to 3:15 at night. He was aware about a policeman being present at Bharuch Hospital permanently. He lodged the complaint at Ankleswhar Police Station at 11:35 next morning. He further stated that his sister visited his house about 30 to 35 times after marriage, during which she complained about ill-treatment on 10 to 12 occasions. Before 27.2.1995, he had not complained to anyone in writing about dowry demand or torture to his sister. Though he stated that his sister had written one such letter, no such letter was produced. On 4.2.1995, Pradipbhai, brother of accused No.1 had got married, in which the complainant had along with his parents attended. During the marriage of Pradipbhai, Veenaben had also participated. The complainant though was not present during the marriage, was present on the previous day, when Veenaben had participated enthusiastically.

5.2. Vimalaben (P.W.-4) in her evidence also narrated about the complaint of dowry demand and physical and verbal abuse meted out to Veenaben by her husband and his parents. She also stated that about one and half month before the death, Veenaben had come home, since there was dowry demand from her. She had stated that there was persistent demand and if nothing is done, she would do something drastic. Jayeshbhai (P.W.-3) had gone to drop Veenaben to her husband's house. On 27.2.1995, this witness along with her son reached Bharuch Civil

Hospital, upon being told by the husband of Veenaben that she has received burn injuries. When they reached the hospital, she found that all the accused persons were present. Her daughter had received several burn injuries. The witness asked Veenaben as to how she got burn to which she stated that on account of torture, she has burnt herself by pouring kerosene. Thereupon the policeman made her to leave the place.

5.3. In cross-examination, she denied that in her police statement, she has not stated that Veenaben told her that on account of torture, she has burnt herself. Though she stated that she found that there was no ornaments on the body of Veenaben, she denied that she had inquired about the same with accused No.1. She denied that she quarreled with accused No.1 about the ornaments. She agreed that after marriage of Veenaben till the incident, she had good relation with the relatives of accused No.1.

6. Kesrimal (P.W.-5), father of deceased Veenaben in his deposition at Exhibit 54 stated inter alia that at the time of marriage, he had given dowry, which included gold, clothes, fridge etc. After the marriage, Veenaben used to visit his house regularly. After sometime of the marriage, she had problem in her house on account of insufficient dowry. During her visit, Veenaben used to tell him that her husband and

in-laws required money and were demanding a sum of Rs.2 to 3 lacs for setting of a shop. About one and half month before the incident, Veenben had visited his house and said that her husband and his parents were harassing her a lot and beating her. His son however, took Veenaben back to her matrimonial home. On 27.2.1995, late at night at about 1:15, Pravinbhai, came and informed them that Veenaben had got burnt. Due to late night hours, he could not himself go. His son and his wife however went in a jeep. Next day, he along with the wife of Jayeshbhai went to Bharuch by train. He saw Veenaben and immediately came out. At that time, Veenaben was able to talk. Veenaben expired between 4:30 to 5:30 in the evening.

6.1. In cross-examination, the witness stated that in the hospital, he had no discussion with Veenaben. He stated that Veenaben used to write letters, but in her letters, she had not mentioned about beating or torturing. He stated that though there was a demand of Rs.2 to 3 lacs for setting of a shop, he was not able to satisfy the demand. On the last occasion, when Veenaben visited his house, she had said that she would commit suicide or consume poison. It never occurred to him that due to torture, he should get Veenaben divorced.

7. The Executive Magistrate (P.W.-2) in his deposition at

Exhibit 25 stated that he received yadi from Bharuch City, 'A' Division Police Station between 1:30 to 1:45 on 28.2.1995 when he was in the office, upon which he went to Bharuch Civil Hospital. He contacted the Doctor In-charge of emergency ward and made preparation for recording dying declaration, after verifying and certifying that the patient is conscious. Dr. Mandaliya had accompanied him to the burns ward. He produced and proved the dying declaration Exhibit 70. He found that the patient was in conscious condition and was able to give answers to the questions.

7.1. In his cross-examination, he stated that Veenaben had given her statement without any pressure. She was able to understand the questions fully. He agreed that Veenaben had stated that on the date of the incident, before cooking, she had a quarrel with "Gharwala" (her husband, which expression is used in singular) and she had not stated that she had a quarrel with "Gharwalao" (expression in plural, which would include other relatives of husband also).

8. The dying declaration is at Exhibit 70. The contents of dying declaration, which are short, are reproduced below :

"Q. 1 : Are you conscious and in proper condition ?

: Yes.

Q. 2 : Are you in condition to talk ?

: Yes.

Q. 3 : Presently where are you ?

: In the hospital under treatment.

Q. 4 : Who brought you here, how and when ?

: My brother-in-law, Subhashchandra has brought me here in ambulance.

Yesterday night i.e. on 27.2.1995 at 9:30, I was preparing Khichdi. Before that, I had ordinary quarrel with my "Gharwala" due to which, I felt very hurt. Therefore, I myself poured kerosene on my body in the kitchen and tried to burn myself."

9. P.W. -1, Dr. Laxmanbhai was examined at Exhibit 21. He was a Medical Officer at Bharuch Civil Hospital on the date of incident. He has produced the postmortem report of the body of deceased. In his deposition, he has described multiple burn injuries received by the lady. He also described the nature of treatment given to the patient before her death.

10. One Mariyamben Dhanjibhai (P.W.-8) was examined at Exhibit 61. She was P.S.O. of Ankleshwarnagar Police Station, where the complaint was lodged.

11. Dr. Arvindbhai Mohanbhai (P.W.-9) was examined at Exhibit 67. He was the Medical Officer at Bharuch Civil Hospital, who had certified that Veenaben was in conscious state, when dying declaration was recorded. He stated that when he examined the patient, she was in conscious state and was capable of giving answers. Her temperature was normal and her pulse rate was 102 beat per minute. Babubhai Kavaji Gameti (P.W.-14) was examined at Exhibit 81. He was Investigating Officer and P.I. of Ankleshwar Police Station, who had conducted investigation. He stated that during his investigation, it was revealed that Veenaben after the incident, was immediately shifted to Patel Surgical Home, after which she was taken by her husband to Dr. Khan, who is burn specialist.

12. Brother of accused No.1, Subhashchandra was examined as D.W.-1 at Exhibit 94. He stated inter alia that at the time of marriage of his brother, no dowry was demanded. After that also, no demand was made nor any items received. He stated that on the date of the incident, since his wife had gone to Mumbai he and his children had gone to his

father's house for dinner. After the children had their food, he sat down to eat. Since Khichdi, which was made for dinner got over, he had vegetable and Bhakhri. At that time, accused No.1 and deceased had not yet taken dinner. Since Khichdi was over, accused No.1 scolded the deceased and told her why was she not preparing sufficient quantity of food. After which, the witness returned to his home with his children. When the children were watching T.V. in the house, he was called frantically by his mother to rush, since Veenben was burning. When he reached the spot, he found that Veenaben was standing in the kitchen in a blaze and accused No.1 was trying to extinguish the fire by pouring water. He and accused No.1 immediately covered Veenaben with blankets and extinguished the fire. They thereafter called the ambulance and took Veenaben to Patel Surgical Home near Station Road. Upon advise of the Doctor, they took her to Dr. Khan's hospital at Bharuch. After about one and half hour of treatment, Dr. Khan wrote a note and referred them to Bharuch Civil Hospital. Though he admitted that he had got married second time, since his first wife Ranjanben expired in the year 1982, he denied that Ranjanben had committed suicide.

13. This, broadly speaking is the evidence on record. On the basis of this evidence, it is necessary to decide whether the learned Judge was justified in convicting accused No.1 for the offences

punishable under Section 498-A as well as Section 306 of Indian Penal Code and convicting accused No.3 for the offence punishable under Section 498-A of Indian Penal Code.

14. On behalf of the appellants, learned advocate Shri K.J. Shethna submitted that there was gross delay in filing the FIR. He pointed out that the relatives of Veenaben were informed about the incident at night between 27.2.1995 and 28.2.1995 at about 1 o'clock. They were brought to the hospital at Bharuch in the same jeep in which accused No.1 had gone to their house to intimate them about the incident. Eventually the complaint was filed in the afternoon at 12:05 on 28.2.1995.

14.1. He submitted that the conduct of the accused and other relatives would also show that the allegations are not correct. They had tried to douze the fire by pouring water and covering the lady with blankets. They immediately thereafter, shifted her first to a hospital and thereafter to a burns specialist and upon his reference to Civil Hospital, Bharuch. Thus the accused had made maximum efforts to save the life of the lady.

14.2. It was contended that the dowry demand is not proved. No

complaint in this regard was made to the police or other members of the community.

14.3. It was next contented that the defence witness has given the deposition, which inspires confidence and no contradiction has been extracted in the cross-examination.

14.4 It was vehemently contended that the dying declaration recorded by the Executive Magistrate absolved all the accused of any involvement. It was submitted that Veenaben did not state anything about her alleged ill-treatment by the accused. It was contended that when this dying declaration is produced by the prosecution and proved by the prosecution witnesses and when there is no challenge to the testimony of the witness or the contents of the dying declaration, the prosecution cannot disown statement in the declaration. It is submitted that alleged dying declaration of the deceased made before her mother does not inspire confidence and cannot be relied upon in face of contrary version contained in the dying declaration recorded by the Executive Magistrate.

14.5 Reliance was placed on the decision of the Hon'ble Supreme Court reported in **AIR 1974 SC 344** in the case of **Harchand Singh V.**

State of Haryana to contend that where the prosecution leads two sets of evidence, each one of which contradicts the other, no conviction can be based on such evidence.

14.6 Reliance was placed upon the decision of the Hon'ble Supreme Court reported in **AIR 1964 SC 900**, in the case of **Moti Singh V. The State of Uttar Pradesh** in which it was observed that :

> "The effect of finding is that the alleged dying declaration of Gaya Charan, Ex. Kha 75, cannot be admissible in evidence. Clause (1) of S. 32 of the Evidence Act makes a statement of a person who has died relevant only when that statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction, which resulted in his death."

Above decision is relied upon to contend that in the statement made by the deceased, which is not relevant as to cause her death is not admissible in evidence under Section 32 of the Evidence Act.

14.7 Reliance was placed on the decision of Hon'ble Supreme court reported in **AIR 1975 SC 1026** in the case of **Ram Kumar Pande V. The State of Madhya Pradesh** to contend that even omissions in the deposition are important and relevant to judge the prosecution case.

15. On the other hand, learned A.P.P. Shri P.D. Bhate for the State opposed the appeal and submitted that there is a voluminous evidence on record to convict the accused. He submitted that the deceased received burn injuries and died a gruesome death. The marriage had lasted only for five years, during which time, the lady gave birth to two children. Out of sheer frustration and due to torture and beating, she committed suicide leaving behind two younger children motherless.

16. From the evidence on record, it would appear that the prosecution witnesses P.W.-3 - Jayeshbhai - brother of the deceased, P.W.-4 - Vimlaben - mother of the deceased and P.W.-5 - Keshrimal - father of the deceased have consistently stated in the deposition about the persistent dowry demand and beating and torture being meted out to the deceased by the accused. It is not in dispute that accused Nos. 2 and 3 i.e. parents of accused No.1, who is a husband of the deceased were residing in the same house since few years before the date of incident. The witnesses have stated in turn that shortly after the marriage of Veenaben, dowry demands were made from her husband and his parents. They were not happy that sufficient dowry was not given at the time of marriage and demanded that she brings more money from her father. Such complaint, she was making to her brother and parents

during her visit to her parents' house. Her parents' house and her matrimonial home were at a distance of about 20 k.m.. She frequently visited her parents' house during the period of five years of her marriage. According to her brother, P.W.-3, she made such complaint on as many as on 12 occasions. Each time, she would be persuaded to keep calm and the witnesses also would reason with the accused not to harass her for dowry. She also complained to her brother that she was being physically and verbally abused. All three witnesses have also stated that about one and half month before the incident, Veenaben visited their house and had once again complained about the ill-treatment.

17. Though there are certain minor contradictions in different versions put forth by these three witnesses, in so far persistent dowry demand and resultant physical and verbal abuse upon the deceased is concerned, however, the witnesses were unanimous.

18. Nothing substantial has come out in the cross-examination of these witnesses in so far as the dowry demand is concerned and in so far as beating and verbally abuses are concerned. The witnesses have stated that they had given dowry as per their custom at the time of marriage. They were however, not in a position to fulfill the further demands.

19. In so far as the defence witness 1 is concerned, though he has stated that at the time of marriage, he was present and stated that no dowry was brought. Obviously he would not have personal knowledge about further dowry demand or the condition of the deceased, if she could not fulfill such demand. Though this witness resides close to the house, where the deceased and the accused were residing, it is admitted that they were living separately. He would therefore, have no personal knowledge about any specific demand if any being from on the deceased. His testimony in this regard, therefore, is of no use to the defence.

20. Section 498-A of Indian Penal Code makes punishable cruelty caused by the husband or relative of the husband to a woman. Section 498-A reads as follow.

> **Section 498-A** : Husband or relative of husband of a woman subjecting her to cruelty.
>
> Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
>
> Explanation - For the purpose of this Section, "cruelty" means-
>
> Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet

any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

21. Thus, from the material on record, it can be seen that the prosecution succeeded in establishing the ingredients of Section 498-A of Indian Penal Code against all the accused.

22. The question of application of Section 306 of Indian Penal Code, however, stands on a different footing. Section 306 of Indian Penal Code makes abetment of suicide punishable for a term that may extend to 10 years or with fine.

23. The question is whether the accused abetted the suicide committed by the deceased. It is not disputed that the deceased committed suicide by pouring kerosene over herself and by setting herself ablaze. As per the prosecution version, she committed suicide on account of dowry demand and torture meted out to her by the accused.

24. I however, find that the evidence on record is not sufficient to drive home this charge.

25. I am in agreement with the submissions of the counsel for

the appellants that in view of the dying declaration recorded by the Executive Magistrate, the prosecution cannot rely on other evidence on record to contend that the deceased committed suicide on account of persistent dowry demand or torture.

26. The contents of dying declaration are already noted in the earlier portion of the judgment. In the dying declaration, the deceased clearly stated that she had ordinary quarrel with her husband before she started preparing food. She felt deeply hurt due to which she went to the kitchen and poured kerosene on herself and set herself ablaze. This dying declaration Exhibit 70 has been proved by the Executive Magistrate, P.W.2 in his deposition at Exhibit 25. He stated that the lady was conscious and was in proper condition to give answers. Neither version of the witnesses nor contents of the dying declaration were questioned by the prosecution. In fact, the prosecution relied on the dying declaration. That being so, it would be highly unsafe to rely on the so called disclosure by the deceased to her mother regarding cause of death. Even otherwise I find that the oral testimony of the witnesses in this regard suffers from material contradictions. P.W.-3 Jayeshbhai in his deposition stated that the deceased was not in a condition to talk when he saw her. Around the same time, P.W.-4 mother of the deceased, claims to have spoken to her daughter regarding cause of the death

being harassment. Even the disclosure made by this witness are insufficient to hold the accused guilty of the charge under Section 306 of Indian Penal Code. P.W.-4, Vimlaben only stated that upon being asked as to cause of burn injuries, Vimlaben stated that because of harassment, she has burnt herself. Who harassed her and in what manner is not coming out even from the said so called disclosure by Veenaben to her mother. Considering all these aspects of the matter, I find that it would be unsafe to rely on other evidence sought to be produced on record to link the death of Veenaben to the harassment and ill-treatment given to her by the accused. There is one another aspect of the matter, which cannot be lost sight of. P.W.-3 Jayeshbhai in his cross-examination clearly stated that brother of the accused No.1 had got married on 4.2.1995. Veenaben had participated in the marriage. P.W.3 though was not present on 4.2.1995, he had attended the function on the previous day. He stated that Veenaben had participated in the function on that day enthusiastically. This would show that till 4.2.1995, at least, Veenaben was not sufferring from such severe depression arising out of her ill-treatment, so as to lead her to take an extreme step shortly thereafter.

27. In the decision reported in **(2004) 10 SCC 589** in the case of **Gaffar Badshaha Pathan V. State of Maharashtra**, the Apex Court

observed that it is one thing for an accused to attack a dying declaration in a case where the prosecution seeks to rely on a dying declaration against an accused, but it is altogether different where an accused relies upon a dying declaration in support of the defence of the accidental death. The burden on the accused is much lighter. He has only to prove reasonable probability.

27.1. In the present case, it is the prosecution itself which relied on the dying declaration which on the question of circumstances leading to the death of the deceased, substantially aids the defence.

28. Considering all these aspects of the matter, I find that the Court below was in error in holding that charge under Section 306 of Indian Penal Code is established against the accused No.1.

29. Though vehemently contended by the learned counsel for the appellants that in the face of the dying declaration Exhibit 70, even charge under Section 498-A must fail, I am unable to concur. The dying declaration is cryptic in nature. It only reveals the reason for immediate provocation for the deceased to commit suicide. No question was put to the deceased regarding the treatment, she otherwise received from the accused. Having several extensive burn injuries, if the deceased herself

did not volunteer to make such disclosure to the Executive Magistrate surely the same cannot obliterate other witness produced by the prosecution. Unfortunately, the Executive Magistrate did not find it proper to ask any further question in this regard. This lacuna, however, would not wipe out the evidence produced by the prosecution. As already noted the witnesses had categorically stated about the ill-treatment of the deceased by the accused for dowry demand.

30. I do not find that there was such delay in filing the FIR as to destroy the prosecution case. Relatives of the deceased would naturally be under state of shock and considerable stress due to sudden, untimely and violent death of a near relative. If they take some time to lodge complaint, without there being anything more on the record, some minor delay in filing the complaint would not be fatal to the prosecution.

31. In conclusion, I find that though the conviction of accused No.1 under Section 306 of Indian Penal Code cannot be sustained, the conviction of the accused, appellants under Section 498-A recorded by the Courts below is maintained.

32. Coming to the question of quantum of punishment, I find that the trial Court has awarded maximum punishment of three years to

accused No.1, appellant No.1 and one year for accused No.3, appellant No.3. I do not find any reason for awarding maximum punishment to accused No.1. It is stated before the Court that accused No.3 is presently aged about 75 years. Considering these aspects of the matter, I find that the sentence awarded by the trial Court needs to be suitably reduced.

33. Under the circumstances, accused No.1 is sentenced to undergo rigorous imprisonment for a period of one year, accused No.3 shall undergo rigorous imprisonment for a period of six months. The direction of payment of fine for the offence punishable under Section 498-A remained unaltered. With these directions, appeal is disposed of. Bail stands cancelled. However, the appellants shall have time upto 31.1.2008 to surrender.

(AKIL KURESHI, J.)

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